

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 484 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

AMARSING JETMALSING DARBAR

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MS KN VALIKARIMWALA,APP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/07/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the order of externment dated 28-2-98 Annexure "B" to the petition passed by respondent No.1-Sub-Divisional Magistrate, Tharda Dist: Banaskantha, which is confirmed by respondent No.2-Dy Secretary, Home Department vide his order dated 13th May 1998, externing the petitioner from Banaskantha district and other adjoining districts of

Mehsana, Sabarkantha, Patan, Kutch-Bhuj, Ahmedabad and Surendranagar for a period of two years.

Since the petition is required to be allowed on the first contention raised by Mr. Dave for the petitioner that the subjective satisfaction arrived at by the externing authority is not genuine that the witnesses are not coming forward to give evidence against the petitioner, it is not necessary to refer to and deal with all other contentions and renarrate the allegations made in the show cause notice and the impugned order. In the show cause notice issued under Section 56 of the Bombay Police Act (hereinafter referred to as "the Act") to the petitioner, it is alleged that the petitioner is involved in commission of offences and illegal criminal activities and the witnesses are not willing to come forward to give evidence in public by reason of the apprehension on their part as regards the safety of their person and property. However, there are as many as seven prohibition cases registered against the petitioner wherein witnesses are coming forward to give their evidence against the petitioner. In all the cases the statements of the witnesses have been recorded by Tharad Police Station. In view of this undisputed fact, I am of the opinion that the subjective satisfaction arrived at by the externing authority is not genuine and, therefore, the externment order passed against the petitioner is liable to be quashed and set aside.

In the result the petition is allowed. The order dated 28-2-98 passed by respondent No.1 and confirmed in appeal by respondent No.2 vide order dated 13-5-98 is is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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